**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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| In re:<br>TIMOTHY M. BARRETT,<br>Debtor.<br>----------------------------------------------<br>VALERIE JILL MINOR,<br>Movant,<br>v.<br>TIMOTHY M. BARRETT,<br>Respondent. | Case No. 17-20621-CMB<br><br>Chapter 13<br><br>Related to Doc. No. __13__<br><br>Doc. No. ____<br><br>Hearing Date and Time:<br>April 24, 2017 at 1:00 p.m. |

**OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN DATED MARCH 20, 2017**

Valerie Jill Rhudy Minor ("Ms. Minor") objects to confirmation of Mr. Barrett's proposed Chapter 13 plan on the following grounds:

1. Confirmation should be denied because Mr. Barrett is not eligible to be a Chapter 13 debtor under 11 U.S.C. § 109(e). He is not eligible because he does not have a regular income and because he has noncontingent, liquidated, unsecured debts of more than $394,725, including the child support arrearage. Mr. Barrett claims that the arrearage is "unknown," but the amount is simply the difference between what he was ordered to pay and what he has paid, plus interest. Disputed debts count toward the debt limitation if they are noncontingent and liquidated. *See In re McGarry*, 230 B.R. 272, 275 (Bankr. W.D. Pa. 1999).

2. Confirmation should be denied pursuant to 11 U.S.C. § 1325(a)(8) because Mr. Barrett has not paid any post-petition child support. Under the Order dated June 4, 2007 ("the 2007 Order"), Mr. Barrett was obligated to pay $1,511 on March 1, 2017, and again on April 1, 2017. He did not.

3. Confirmation should be denied because the Plan does not provide for the full payment of all priority claims as required by 11 U.S.C. § 1322(a)(2). The Plan proposes only $90,000 in payments on priority claims. The priority claims − including the child support arrearage, the Fee Award and the Costs Award, and more than $10,000 of the IRS claim – will total more than $140,000. The Fee Award and the Costs Award are domestic support obligations. *See In re Louttit*, 473 B.R. 663, 666-69 (Bankr. W.D. Pa. 2012) (award of attorney fees from custody litigation held to be a domestic support obligation, citing cases).

4. Confirmation should be denied pursuant to 11 U.S.C. §§ 1325(a)(3) and 1325(a)(7) because the Plan and the Petition were not filed in good faith.

4.1. There is nothing to reorganize or protect, because Mr. Barrett has nothing. He stopped working for wages and paying his debts years ago.

4.2. The bankruptcy case was filed in lieu of posting a bond to suspend execution of a state court judgment pending appeal. A bankruptcy filing "intended to serve in lieu of a supersedeas bond" may be considered in bad faith. *See In re Soppick*, 516 B.R. 733, 747 (Bankr. E.D. Pa. 2014).

4.2.1. Mr. Barrett and Ms. Minor were married and have children. They have engaged in "an ongoing series of acrimonious state court child custody proceedings that have spanned over a decade." *Barrett v. Minor*, No. 1:2015-cv-00032, 2015 WL 5098200, at *1 (W.D. Va. Aug. 31, 2015).

4.2.2. In 2012, Mr. Barrett appealed twelve cases on custody and visitation from Juvenile Court to Circuit Court. In 2013, the Circuit Court allowed Mr. Barrett to withdraw some of his appeals and nonsuit the others. In Case No. CJ 13-454, Mr. Barrett refiled his nonsuited appeals, which were then dismissed.

4.2.3. In *Barrett v. Minor*, Record No. 0173-14-3, 2015 WL 2189966 (Va. Ct. App. May 12, 2015), the Court of Appeals affirmed the dismissal. It remanded the case "for determination and entry of an award of reasonable attorneys' fees incurred by appellee defending this appeal." Copies of this opinion and the mandate are attached to Ms. Minor's proof of claim.

4.2.4. In December 2015, Ms. Minor filed a motion for the appellate fees. On January 22, 2016, Mr. Barrett wrote that the fee motion was a waste of time, because he had no money to pay and because "no matter the size of your award, unless it is *de minimis*" he would "file for bankruptcy and see any debt to you in this case ... discharged." A copy of this letter is attached.

4.2.5. A hearing on fees was held on July 6, 2016. On June 27, 2016, Mr. Barrett wrote that only the expert witness and Mr. Barrett's bankruptcy attorney would make money off the fee motion. At the hearing, Mr. Barrett testified that he would file a bankruptcy case if the Circuit Court awarded more than $500. Copies of the letter and Mr. Barrett's testimony are attached.

4.2.6. By its Order dated July 6, 2016, the Circuit Court awarded appellate fees in the amount of $10,500 ("the Fee Award"). A copy of the Order is attached to Ms. Minor's proof of claim.

4.2.7. Mr. Barrett appealed the Fee Award. The appeal is pending before the Court of Appeals in Record No. 1250-16-3. Mr. Barrett has not filed a bond to suspend execution on the Fee Award during the pendency of his appeal, as he could have done pursuant to Va. Code § 8.01-671.1(C).

4.2.8. By her motion dated November 14, 2016, Ms. Minor sought to enforce the Fee Award against the $10,713 held on deposit by the Clerk of the Circuit Court, the remainder of money Mr. Barrett deposited in 2010 to secure bonds for the child support appeals that were decided in 2011.

4.2.9. Mr. Barrett wrote in a series of letters declaring that if a hearing date was set on the motion to enforce the Fee Award, then he would file this bankruptcy case, and asking the Circuit Court to stay any action on the motion. He wrote that the leftover bond money will "in all likelihood" be paid over to Ms. Minor, but he did not want it to be paid now and he did not want it to be paid toward the Fee Award. Copies of Mr. Barrett's letters are attached.

4.2.10. The hearing was scheduled for February 22, 2017. This case was filed on February 20, 2017.

4.3. Mr. Barrett left out many details about his financial affairs from his schedules. "Bad faith" depends in part on "whether the debtor has been forthcoming with the bankruptcy court and the creditors." *In re Lilley*, 91 F.3d 491, 496 (3d Cir. 1996).

4.3.1. Mr. Barrett did not disclose any amount for his pre-petition child support arrearage, even though his claim for modification of the 2007 Order was dismissed in 2014 and the dismissal was affirmed in 2015. *Barrett v. Com.*, 1613-14-3 and 1614-14-3, 2015 WL 2369150 (Va. Ct. App. May 19, 2015). The child support arrearage is the only debt he proposes to pay in his Plan, but he did not state anywhere in the schedules how much is owed.

4.3.2. Mr. Barrett did not disclose the money held in *custodia legis* by the Clerk of the Bristol Circuit Court, more than $10,000, even though his stated purpose for filing this case was to prevent Ms. Minor from taking that money.

4.3.3. Mr. Barrett did not disclose the pending cases in the United States Tax Court, Docket Nos. 004482-15S and 010774-15S, to which both he and his wife are parties, even though those cases are the basis for the priority claims of the IRS. The cases were set for trial on

March 27, 2017, in Pittsburgh, but they were stayed on Mr. Barrett's motion after this case was filed.

4.3.4. Mr. Barrett did not disclose the amount of his claims against Ms. Minor in Case Nos. CL 10-145 (still pending) and CL 15-436 (on appeal) − more than $30 million. The Supreme Court of Virginia denied Mr. Barrett's first of two petitions for appeal in Case No. CL 15-436 on March 13, 2017, in Record No. 161022. By his motion dated March 20, 2017, Mr. Barrett asked the Supreme Court to defer issuance of its mandate in Record No. 161022, until the U.S. Supreme Court has ruled on his forthcoming petition for writ of certiorari.

4.3.5. Mr. Barrett did not disclose in his schedules the Costs Award that the Court of Appeals entered on January 11, 2017, in the amount of $2,207.20, at the conclusion of the appeal it decided in *Minor v. Barrett*, Record No. 0103-16-3, 2016 WL 5889030 (Va. Ct. App. Oct. 11, 2016).

4.3.6. Mr. Barrett did not disclose in his schedules that his obligation to pay additional child support in the amount of $1,511 per month will continue post-petition until the last child graduates from high school in May of 2019, unless the orders now in effect are modified.

Based on the foregoing, Ms. Minor prays that this Court will enter an order denying confirmation of Mr. Barrett's Chapter 13 Plan.

Dated: April 17, 2017

Respectfully submitted,

/s/ Aurelius P Robleto
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